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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,434	06/26/2003	Mark P. Anstadt	MPA-554	5213
37282	7590	07/07/2005		
HOWARD J. GREENWALD P.C. 349 W. COMMERCIAL STREET SUITE 2490 EAST ROCHESTER, NY 14445-2408			EXAMINER OROPEZA, FRANCES P	
			ART UNIT 3762	PAPER NUMBER

DATE MAILED: 07/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/607,434

Applicant(s)

ANSTADT ET AL.

Examiner

Frances P. Oropeza

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 5/18/05 (Election).
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-242 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-242 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

The embodiments of the first parameter:

Embodiment 1 – parameter input by a patient.

Embodiment 2 – parameter input by a physician.

Embodiment 3 – parameter is a therapeutic response factor.

Embodiment 4 – parameter is an electrophysiological parameter.

Embodiment 5 – parameter is an array of electrophysiological parameters.

Embodiment 6 – parameter is a biochemical marker.

Embodiment 7 – parameter is blood pressure.

Embodiment 8 – parameter is blood flow velocity.

Embodiment 9 – parameter is cardiac ejection fraction.

Embodiment 10 – parameter is inferred from ultrasonic image data.

Embodiment 11 – parameter is inferred from magnetic resonance image data.

Embodiment 12 – parameter is “a numerical values”.

Embodiment 13 – parameter is a predictive parameter

The embodiments of the command instructions that instruct the ventricular assistance apparatus:

Embodiment 14 – to maintain function of heart constant.

Embodiment 15 – to train the heart.

Embodiment 16 – to assist in regeneration of said heart”.

The embodiments of command instructions exported by the ventricular assistance apparatus:

Embodiment 17 – to displace the drive fluid.

Embodiment 18 – to deliver of a first therapeutic agent.

Embodiment 19 – to deliver of a first regenerative agent.

The invention elected by the Applicant in the response of 5/18/05 is a process for assisting the function of a heart, claims 131-162. This process for assisting the function of a heart comprises importing a “first parameter” related to heart function. There are thirteen claimed embodiments of the “first parameter”, embodiments 1-13. Further, in a dependent claim, the process for assisting the function of a heart also claims a direct mechanical ventricular assistance apparatus. There are three command instructions that instruct the ventricular assist apparatus, embodiments 14-16. There are three command instructions exported by the ventricular assist apparatus, embodiments 17-19.

The Applicant is required under 35 U.S.C. 121 to elect:

- a single disclosed species of the “first parameter”,
- a single disclosed species of the command instructions that instruct the ventricular assistance apparatus, and
- a single disclosed species of the command instructions exported by the ventricular assistance apparatus

for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 131 is deemed generic.

The Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, the Applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, the Applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should the Applicant traverse on the ground that the species are not patentably distinct, the Applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the Examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

The Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

The Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fran Oropeza whose telephone number is (571) 272-4953. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571) 272-6996. The fax phone numbers for the organization where this application or proceeding is assigned is (703) 872-9306 for regular communication and for After Final communications.

Frances P. Oropeza
Patent Examiner
Art Unit 3762

FPD
7/5/05


ROBERT E. PEZZUTO
PRIMARY EXAMINER